



ALABAMA BOARD OF MASSAGE THERAPY

610 S. McDonough Street
Montgomery, AL 36104
334-269-9990
334-263-6115 fax

May 17, 2004

Honorable Troy King
Attorney General
State of Alabama
11 N. Union Street
Montgomery, AL 36130

Dear Attorney General King:

The Alabama Board of Massage Therapy regulates the profession of massage therapy, Code of Alabama, 1975, § 34-43-1, et. seq. The practice act ensures that the public is protected from the unprofessional, improper, unauthorized, and unqualified practice of massage therapy. § 34-43-5 exempts from licensure qualified members of other professions who are licensed and regulated by Alabama law while they are rendering services within the scope of their license or regulation, provided that they do not represent themselves as a massage therapist.

The Board respectfully requests an attorney general's opinion to clarify the extent, if any that a licensed cosmetologist can practice massage therapy.

Thank you for your assistance and cooperation in this matter. Please do not hesitate to contact me should you have any questions.

Respectfully,



Keith E. Warren
Executive Director



STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

TROY KING
ATTORNEY GENERAL

May 25, 2004

ALABAMA STATE HOUSE
11 SOUTH UNION STREET
MONTGOMERY, AL 36130
(334) 242-7300
WWW.AGO.STATE.AL.US

Honorable Keith E. Warren
Executive Director
Alabama Board of Massage Therapy
610 South McDonough Street
Montgomery, Alabama 36104

Dear Mr. Warren:

This letter will acknowledge receipt of your recent request for an Attorney General's opinion. This Office is anxious to render a prompt answer to your request, and we will certainly respond as soon as possible.

In the meantime, should you need to discuss any aspect of your request, feel free to contact me by calling 334-242-7403 or by writing to me at the above address.

Sincerely,

TROY KING
Attorney General
By:

A handwritten signature in cursive script that reads "Carol Jean Smith".

CAROL JEAN SMITH
Chief, Opinions Division

TK/CJS/nl

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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

TROY KING
ATTORNEY GENERAL

June 24, 2004

ALABAMA STATE HOUSE
11 SOUTH UNION STREET
MONTGOMERY, AL 36130
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WWW.AGO.STATE.AL.US

Honorable Keith E. Warren
Executive Director
Alabama Board of Massage Therapy
610 South McDonough Street
Montgomery, Alabama 36104

Massage Therapy Board – Cosmetology –
Cosmetologists – Licenses and Permits

A licensed cosmetologist may practice massage therapy only to the extent that the scope of the massage therapy license and the scope of the specific cosmetology license overlap. A licensed cosmetologist may not represent himself or herself as a massage therapist and must obtain a separate massage therapy license to perform massage services other than those included in his or her specific cosmetology license.

Dear Mr. Warren:

This opinion of the Attorney General is issued in response to your request on behalf of the Alabama Board of Massage Therapy.

QUESTION

To what extent, if any, may a licensed cosmetologist practice massage therapy?

FACTS AND ANALYSIS

The Alabama Board of Massage Therapy regulates the profession of massage therapy under chapter 43 of title 34 of the Code of Alabama. Section 34-43-6 provides as follows:

The purpose of the board is to protect the health, safety, and welfare of the public by ensuring that licensed massage therapists, massage therapy schools, and massage therapy instructors meet prescribed standards of education, competency, and practice.

ALA. CODE § 34-43-6(a) (2002). An important purpose of the practice act is also to protect the public from the unauthorized and unqualified practice of massage therapy by requiring the licensing of massage therapists. Section 34-43-4 states that a person who is not licensed by the Alabama Board of Massage Therapy may not do any of the following:

(1) Advertise that he or she performs therapeutic massage or related touch therapy modalities.

(2) Hold himself or herself out to the public as a massage therapist, using any name or description denoting himself or herself as a massage therapist, or purporting to have the skills necessary to perform massage therapy.

(3) Perform massage therapy.

ALA. CODE § 34-43-4 (2002). Section 34-43-16 regulates advertising by non-licensed persons, stating that such persons "shall not use the words 'massage' or 'bodywork' on any sign or other form of advertising describing services performed by the person or at the establishment." ALA. CODE § 34-43-16 (2002).

Anyone who violates the practice act will be guilty of a Class C misdemeanor. ALA. CODE § 34-43-17 (2002). Section 34-43-5(a), however, provides a number of persons who are exempted from the requirements of chapter 43. Section 34-43-5(a)(2) provides for the exemption of "[q]ualified members of other professions who are licensed and regulated under Alabama law *while they are in the course of rendering services within the scope of their license or regulation*, provided that they do not represent themselves as massage therapists." ALA. CODE § 34-43-5(a)(2) (2002) (emphasis added).

The State of Alabama licenses and regulates cosmetologists through the Alabama Board of Cosmetology. ALA. CODE § 34-7A-1, *et seq.* (2002). Therefore, cosmetologists licensed by the Alabama Board of Cosmetology are exempt from the regulations contained in chapter 43, provided that they are acting within "the course of rendering services within the scope of their license or regulation" and that they are not holding themselves out to the public as a massage therapist." ALA. CODE § 34-43-5(a)(2) (2002).

The scope of the license to practice cosmetology includes the following:

Any one or a combination of practices generally and usually performed by, and known as the profession of beauty culturists, cosmeticians, cosmetologists, hairdressers, or of any other person holding himself or herself out as practicing cosmetology by whatever designation and within the meaning of this chapter in and upon whatever place or premises; and in particular shall include, but otherwise not be limited thereby, to the following or any one or a combination of practices: arranging, dressing, curling, waxing, weaving, cleansing, cutting, singeing, bleaching, coloring, or similar work upon the hair of any person, by any means, and/or with hands or mechanical or electrical apparatus or appliances, or by the use of cosmetic preparations, antiseptics, tonics, lotions, creams or otherwise, *massaging*, cleansing, stimulating, exercising, beautifying, or similar work on *the scalp, face, neck, arms, legs, feet, hands, bust, or upper part of the body*, or manicuring the nails of any person or adding nail tips, extensions, gels, or other articles to nails, or performing desairology, the art and science of dressing and arranging the hair, nails, and clothing of the deceased.

ALA. CODE § 34-7A-1(9) (2002) (emphasis added).

The general definition of the practice of cosmetology provided in section 34-7A-1(9) includes the massage of the face and upper part of the body, as well as the feet and the legs. There are a number of different cosmetology licenses available in Alabama, such as a license for nail technology (manicuring) and one for esthetics, which includes skin care and facials. Each license has specific educational requirements and a specialized practical exam during which the candidate for licensure demonstrates his or her skill. The practical exam for nail technology includes a hand and finger massage during manicures. Massaging the face comprises a significant portion of the esthetics practical exam. As these types of massage are within the scope of the licenses, it follows that a cosmetologist performing such types of massage will not be in violation of the massage therapy practice act. A licensed cosmetologist would also be permitted to use the word "massage" to describe such services, provided that he or she is not representing oneself as a massage therapist.

Your question asks whether a licensed cosmetologist may practice "massage therapy." The definition of massage therapy provided in section 34-43-3(13) is very expansive and includes many types of massage techniques. The

majority of these techniques would likely exceed the type of massage training given for cosmetology services that include massage, such as facials. As the purpose of licensure for massage therapy is to protect the public, it would not be appropriate to allow a cosmetologist to perform the same duties as a massage therapist when the cosmetologist does not have the necessary training. Any type of massage services that are beyond the normal type of massage given in cosmetology services would be an unauthorized practice of massage therapy that would be regulated under the massage therapy practice act. To perform such additional massage services, a licensed cosmetologist would have to separately obtain a license to practice massage therapy. To obtain a license, one must meet the requirements in section 34-43-9, which include the completion of the minimum amount of educational hours and passing the National Certification Exam for Therapeutic Massage and Bodywork offered by the National Certification Board for Therapeutic Massage and Bodywork or an equivalent exam that is accredited by the National Committee for Certifying Agencies. ALA. CODE § 34-43-9(a)(2) (2002).

CONCLUSION

A licensed cosmetologist may practice massage therapy only to the extent that the scope of the massage therapy license and the scope of the specific cosmetology license overlap. A licensed cosmetologist may not represent himself or herself as a massage therapist and must obtain a separate massage therapy license to perform massage services other than those included in his or her specific cosmetology license.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Carol Jean Smith of my staff.

Sincerely,

TROY KING
Attorney General
By:



CAROL JEAN SMITH
Chief, Opinions Division

TK/CJS/kh

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